

REPRESENTATIVE FOR PETITIONER: Sandra Bickel, Attorney at Law, Ice Miller.

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney at Law,
Meighen & Associates, P.C.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

BEDFORD APARTMENTS, LP)	
)	
)	
Petitioner)	
)	
v.)	Petition No.: 47-011-01-1-4-00008
)	
)	County: Lawrence
)	
)	Township: Shawswick
)	
)	Parcel No.: 1100377603
SHAWSWICK TOWNSHIP)	
(LAWRENCE COUNTY))	Assessment Year: 2001
ASSESSOR)	
)	
Respondent)	
)	

Appeal from the Final Determination of
Lawrence County Property Tax Assessment Board of Appeals

September 15, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue presented for consideration by the Board was:
Whether economic obsolescence should be applied to the subject property due to restricted rents.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 Sandra Bickel filed a Form 131 petition on behalf of Bedford Apartments, LP d/b/a Shawnee Apartments (Bedford Apartments) petitioning the Board to conduct an administrative review of the above petition. The determination of the Lawrence County Property Tax Assessment Board of Appeals (PTABOA) was issued on August 15, 2002. The Form 131 was filed on September 13, 2002.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on June 17, 2003 in Bedford, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner:

Ms. Sandra Bickel, Ice Miller

Ms. Bonnie Mitchell, Witness

Mr. David Miller, Witness

Ms. Gina Dillman Hoskins, Witness

Ms. Julia Barr, Witness

Ms. Elizabeth Mutzl, Witness
Mr. Dan Sullivan, Witness
Mr. Larry Sipes, Witness

For the Respondent:

Ms. Marilyn Meighen, Meighen & Associates, P.C.
Mr. Frank Kelly, Witness
Mr. Ken Surface, Witness

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Ms. Bonnie Mitchell
Mr. David Miller
Ms. Gina Dillman Hoskins
Ms. Julia Barr
Ms. Elizabeth Mutzl
Mr. Dan Sullivan
Mr. Larry Sipes

For the Respondent:

Mr. Frank Kelly
Mr. Ken Surface

6. The following documents were submitted at the administrative hearing:

For the Petitioner:

Petitioner's Exhibit A – A list of the intended witnesses and evidence to be presented at the hearing on June 17, 2003, dated May 30, 2003.

Petitioner's Exhibit B – A list of the exhibits to be presented by the Petitioner at the hearing, dated June 12, 2003.

Petitioner's Exhibit C – A complete appraisal/summary report presented

by Ms. Bonnie Mitchell, Mitchell Appraisals, Inc.
Petitioner's Exhibit D – A copy of the Indiana Housing Finance Authority
Application for Bedford Apartments, L.P., D/B/A
Shawnee Apartments (A Limited Partnership).
Petitioner's Exhibit E – Feasibility Study.
Petitioner's Exhibit F – Financial Statements for Bedford
Apartments – December 31, 2002 and 2001.
Petitioner's Exhibit G – Declaration of Extended Rental Housing
Commitment.
Petitioner's Exhibit H – Unit Rent Roll for Bedford Apartments, 06/2002.
Petitioner's Exhibit I – Income and Expense Report for Bedford
Apartments (Shawnee Apartments) dated December 2001.

For the Respondent:

Respondent's Exhibit A – Letter, dated May 28, 2003, advising the
Petitioner and the State Board that Marilyn Meighen is
representing the County for the hearing on June 17, 2003.
Respondent's Exhibit B - Letter, dated June 12, 2003, summarizing the
witnesses and exhibits for the hearing to be held June 17,
2003.
Respondent's Exhibit C – Lawrence County PTABOA minutes from June
17, 2002.
Respondent's Exhibit D – Income valuation for Bedford Apartments –
Parcel 11-003776-03 with page 220 of International
Association of Assessing Officers Property Assessment
Valuation (2nd ed. 1996).
Respondent's Exhibit E – A copy of the Supreme Court Case from North
Carolina, *In re Greens of Pine Glen Ltd*, 356 N.C. 642, 576
S.E. 2d 316 (2003).
Respondent's Exhibit F – Property record card for Bedford Apartments.

7. In addition, the following additional evidence was submitted by the Petitioner in a timely manner:

Petitioner’s Exhibit J – Federal and State Partnership Tax Returns, Form 1065 and IT-65.

Petitioner’s Exhibit K– A copy of the court case, *Cascade Court LP v. Noble*, 105 Wash. App. 564, 20 P. 3d 997 (2001).

Petitioner’s Exhibit L – Document describing how to calculate “loaded capitalization rate”.

8. The following additional items are officially recognized as part of the record of proceedings:

Board Exhibit A-Form 131 petition.

Board Exhibit B-Notice of Hearing, dated October 28, 2002.

Board Exhibit C - Request for Additional Evidence from the Petitioner.

9. The assessment for the land and improvements for March 1, 2001 is as follows:

Land	\$36,600	Improvements	\$1,516,700.
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10. The Administrative Law Judge did not conduct an on-site inspection of the subject property, which is located at 100 Shawnee Drive, Bedford, Shawswick Township, Lawrence County.

Jurisdictional Framework

11. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.

12. The Board is authorized to issue this final determination pursuant to Indiana Code §6-1.1-15-3.

Indiana's Property Tax System

13. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
14. Indiana has established a mass assessment system through statutes and regulations designed to assess property according to what is termed “True Tax Value.” See Ind. Code § 6-1.1-31, and 50 Ind. Admin. Code 2.2.
15. True Tax Value does not precisely equate to fair market value. See Ind. Code § 6-1.1-31-6(c).
16. An appeal cannot succeed based solely on the fact that the assessed value does not equal the property’s market value. See *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998) (*Town of St. John V*).
17. The Indiana Supreme Court has said that the Indiana Constitution “does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each individual assessment”, nor does it “mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant”, but that the proper inquiry in tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” See *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
18. Although the Supreme Court in the *St. John* case did declare the cost tables and certain subjective elements of the State’s regulations constitutionally infirm, it went on to make clear that assessment and appeals must continue to be determined under the existing rules until new regulations are in effect.

19. New assessment regulations have been promulgated, but are not effective for assessments established prior to March 1, 2002. See 50 Ind. Admin. Code 2.3.

State Review and Petitioner's Burden

20. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
21. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
22. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
23. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
24. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In

addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind. 2001), and *Blackbird Farms Apartments, LP v. DLGF*, 765 N.E.2d 711 (Ind. Tax 2002).

25. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of Issue

Whether economic obsolescence should be applied to the property because of rent restrictions.

26. The Petitioner contends that this is Section 42 housing¹ and, due to the rent restrictions placed on the property, the property should receive economic obsolescence in the amount of 36%.

¹ Section 42 of the Internal Revenue Code (26 USC § 42) describes the Low Income Housing Tax Credit Program [LIHTC]. In general terms, this program provides incentives for developers to construct affordable housing.

27. The Respondent contends that the property is properly assessed and that no obsolescence is warranted.

28. The applicable rules governing this Issue are:

50 IAC 2.2-1-24 “Economic obsolescence” defined

“Economic obsolescence” means obsolescence caused by factors extraneous to the property. Also referred to as “economic depreciation.”

50 IAC 2.2-1-40 “Obsolescence” defined

“Obsolescence” means a diminishing of a property’s desirability and usefulness brought about by either functional inadequacies or overadequacies inherent in the property itself, or adverse economic factors external to the property.

50 IAC 2.2-10-7 (e):

Some buildings experience loss of value due to **obsolescence**. These effects are much less noticeable than physical depreciation and must be examined in depth. Accurate determination of obsolescence depreciation requires the assessor to recognize the symptoms of obsolescence and to exercise sound judgment in equating his or her observation of the property to the correct deduction in value...

(2) Economic obsolescence may be caused by, but is not limited to, the following:

- (A) Location of the building is inappropriate for the neighborhood.
- (B) Inoperative or inadequate zoning ordinances or deed restrictions.
- (C) Noncompliance with current building code requirements.
- (D) Decreased market acceptability of the product for which the property was constructed or is currently used.
- (E) Termination of the need of the property due to actual or probable changes in economic or social conditions.
- (F) Hazards, such as the danger from floods, toxic waste, or other special hazards.

29. Evidence and testimony considered particularly relevant to this determination include the following:

- a. The Petitioner claims that the rent restrictions on the property cause external (economic) obsolescence. *Bickel statement; Petitioner’s Exhibit C, page 42.*
- b. The court cases of *Pedcor Investments-1990-XIII, L.P. v. State Board of Tax Commissioners*, 715 N. E. 2d 432 (Ind. Tax 1999) and *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801 (Ind. Tax 1998) both establish that obsolescence can be proven, even in Section 42 housing. *Bickel statement.*

- c. Most Section 42 housing has a negative cash flow and is not usually saleable. *Mitchell testimony.*
- d. The comparable properties used in the sales comparison approach provided by the Petitioner are not Section 42 housing, as there were no sales available for Section 42 housing; however the comparable properties are apartments that are similar. *Mitchell testimony.*
- e. The Income Approach is the best way to value this property. *Mitchell testimony.*
- f. The Petitioner used an appraisal to meet the burden of proof in this case and quantifies the amount of obsolescence through the appraisal. *Mitchell testimony.*
- g. The obsolescence is measured as the difference between values obtained from the income approach and the cost approach. The difference is divided by the adjusted value for a percentage of obsolescence. (Testimony provided clarified the amount of obsolescence requested should be 36%, not the listed 57% on page 90 of the appraisal). *Mitchell testimony; Petitioner's Exhibit C, page 9.*
- h. The expenses are much higher during a lease-up year. *Mitchell testimony.*
- i. Mr. Kelly did not use the appropriate cap rate for 2001. Non Section 42 housing would start out with 8.5% or 9%. *Mitchell testimony.*
- j. The tax credits are part of the loan and part of the value of the property. The tax credits are sold for equity financing. *Kelly testimony.*
- k. In the calculations, typical (average) expenses need to be used. Expenses could tend to be skewed with such things as too much office help, excessive management fees, etc. *Kelly testimony.*
- l. Advertising expenses would be much higher the first year and need to be averaged in the obsolescence calculation. *Kelly testimony.*
- m. Shortly after the lease up period, there was very little vacancy, if any. *Kelly testimony.*
- n. The capitalization rate used for the calculations presented by the Respondent was calculated using the following: Sum of the discount rate, the recapture

rate, and the effective tax rate. *Kelly testimony*, citing International Association of Assessing Officers (IAAO) Property Assessment Valuation, 234 (2nd ed. 1996).

- o. It is difficult to determine the expenses of the subject because it has experienced just one year of business. There is no real average to use. *Kelly testimony*.
- p. The income valuation for Bedford Apartments indicates that no obsolescence is warranted. *Respondent's Exhibit D*.
- q. The North Carolina court case, *In re Greens of Pine Glen Ltd*, 356 N.C. 642, 576 S.E. 2d 316 (2003), found that, although the income approach is generally considered to be the most reliable method for determining the market value of income property, the cost approach is better suited for valuing newly developed property. *Respondent's Exhibit E*.
- r. The same case also notes that taxpayers cannot adjust the value of their property by engaging in contractual agreements that reduce the income potential of their property below fair market value. *Respondent's Exhibit E*.
- s. The projected tax liability for these apartments was \$37,493. The taxes came in at approximately \$59,000. A tax appeal would not have been filed for the subject property had the taxes come in at the predicted amount. *Miller testimony*.
- t. The project cost approximately \$3.5 million dollars. The petitioner paid approximately \$1.9 million dollars with the other money coming from loans and tax credits. Bank loans add up to \$1,530,000. *Hoskins testimony*.
- u. Obtaining tax credits is very competitive. *Hoskins testimony*.
- v. The property has been committed to forty (40) years of affordable housing.
- w. The management company has never had a cash flow problem like it has with the subject property, and the tax warrants coming in higher than anticipated has contributed to this problem. *Hoskins testimony*.
- x. Village Management is compensated for managing the subject property. The fees owed the management company are delinquent and the property is running in the red. *Barr testimony*.

- y. The property is not capable of paying the current property taxes. *Barr testimony*.
- z. In the year of appeal, 2001, the tenant turnover rate at the apartments was quite high. This was the lease-up year and not very stable. *Barr testimony*.

Analysis of Issue

The concept of depreciation and obsolescence

- 30. Depreciation is an essential element in the cost approach to valuing property. Depreciation is the loss in value from any cause except depletion, and includes physical depreciation and functional and external (economic) obsolescence. IAAO Property Assessment Valuation, 153 & 154 (2nd ed. 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801, 806 (Ind. Tax 1998)(citing Am. Inst. of Real Estate Appraisers, *The Appraisal of Real Estate*, 321 (10th ed. 1992)).
- 31. Depreciation is a concept in which an estimate must be predicated upon a comprehensive understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating the extent of it in improvements being valued. 50 IAC 2.2-10-7.
- 32. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value to obsolescence. After all, the taxpayer is the one who best knows his business and it is the taxpayer who seeks to have the assessed value of his property reduced. *Rotation Products Corp. v. Department of State Revenue*, 690 N.E. 2d 795, 798 (Ind. Tax 1998).
- 33. Depreciation is a market value concept and the true measure of depreciation is the effect on marketability and sales price. IAAO Property Assessment Valuation, 153 (2nd ed. 1996). The definition of obsolescence in the Regulation, 50 IAC 2.2-

10-7, is tied directly to that applied by professional appraisers under the cost approach. *Canal Square*, 694 N.E. 2d at 806. Accordingly, depreciation can be documented by using recognized appraisal techniques. *Id.*

34. Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists, and (2) the taxpayer must quantify it. *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1233 (Ind. Tax 1998). “[I]n advocating for an obsolescence adjustment, a taxpayer must first provide the State with probative evidence sufficient to establish a prima facie case as to the causes of obsolescence.” *Champlin Realty Company v. State Board of Tax Commissioners*, 745 N.E. 2d 928, 932 (Ind. Tax 2001).
35. The economic obsolescence of a given improvement must be tied to a loss of value. *See Miller Structures, Inc. v. State Bd. of Tax Comm’rs*, 748 N.E.2d 943, 954 (Ind. Tax 2001). In the commercial context, this loss of value usually means a decrease in the property’s income generating ability. *See id.* at 953. The Petitioner is therefore required to show that factors external to the property have adversely affected its generation of income. *See id.* *See also Simmons v. State Bd. of Tax Comm’rs*, 642 N.E.2d 559, 560 (Ind. Tax 1994).

The first prong of the two-prong *Clark* test: Whether the
Petitioner has identified causes of economic obsolescence present in the property.

36. The mandate of the local taxing officials is to assess the value of the property on the assessment date, in this case March 1, 2001. “In determining true cash [true tax] value, ‘only facts as they exist on the first day of March of each year are material to the determination of questions of assessment and valuations of property for purposes of taxation.’” *Governours Square Apartments v. State Board of Tax Commissioners*, 528 N.E. 2d 864, 866 (Ind. Tax 1987) (citing *Stark v. Kreyling*, (1934), 207 Ind. 128, 132, 188 N.E. 680, 681).

37. The Petitioner explained “the property has only been in operation for six months in 2000 [,] all of 2001 and nine months in 2002.” (Petitioner’s Exhibit C, page 84). It is well-established law that an improvement may not experience obsolescence depreciation prior to the beginning of its useful life. *Pedcor*, 715 N.E. 2d at 440 (Obsolescence “cannot be applied to a building that is under construction and whose useful life has not yet begun.”).
38. To prevail in this appeal, Bedford Apartments must therefore establish a prima facie case that the newly constructed apartments experienced a loss of more than 1/3 of its market value (36%) due to economic obsolescence during a span of approximately eight months (six months of 2000 and January – February 2001).
39. In this case, the Petitioner claims “[t]he property suffers from economic obsolescence because of restricted rents.” Board’s Exhibit A, Form 131 petition.
40. Consequently, the Petitioner maintains that it has made a prima facie case for the presence of economic obsolescence because it has shown that an external factor to the property (rent restrictions) has adversely affected its property’s generation of income – namely, the Petitioner can only charge the restricted amounts of rent rather than market rents. The Board, however, disagrees for several reasons.
41. First, the Petitioner has failed to demonstrate that the rent restrictions have reduced the rental income of the apartments.
42. The Petitioner acknowledges that rents charged for the one- and two-bedroom units are below what is allowable by the State. (Petitioner’s Exhibit C, page 82). Discussing the three-bedroom units, the appraisal concludes the rents are also below the maximum allowable but “[c]onsidering these factors [a comparison between the property under appeal and single family dwellings], the subject’s rent is considered reasonable.” *Id.* at page 83.

43. These statements illustrate the fundamental flaw in the Petitioner's argument. Contrary to the Petitioner's claims, the rent restrictions are not preventing the Petitioner from charging greater rents. All of the rents currently charged are "well below what is allowable by the State." *Id.* at page 82. The Petitioner cannot be heard to complain that it is losing income due to rent restrictions when, in fact, the rents charged are below allowable amounts imposed by the restrictions. Put differently, the Petitioner has not demonstrated that the rent restrictions have any impact at all on the rents currently being charged, rents that even the Petitioner characterizes as "reasonable."
44. A careful review of the Petitioner's evidence demonstrates several other factors refuting the Petitioner's claim of obsolescence.
45. For example, the Petitioner has not established a loss in its actual income stream. The Petitioner failed to establish, or even assert, that it has been necessary to reduce the rents charged during the eight-month time period between the opening of the apartment complex and the assessment date. Consequently, at worst, the Petitioner has not lost income, but rather maintained a static income stream. A static income stream does not establish a loss of value. *See Pedcor Inv.-1990-XIII, L.P. v. State Bd. of Tax Comm'rs*, 715 N.E.2d 432, 440 (Ind. Tax 1999) (stating that apartment complex was not entitled to economic obsolescence because income generating ability from one year to the next remained static).
46. Further contradicting the Petitioner's claim, the Petitioner's evidence indicated that rental income actually increased in 2002 (\$253,042) as compared to 2001 (\$204,128). Petitioner's Exhibit F, page 4.
47. Additionally, the Petitioner has failed to demonstrate that the property has experienced any decreased market demand for its apartment units.

48. The Petitioner presented “A Feasibility Study on Low Income Housing Tax Credits” (Feasibility Study) prepared on April 30, 1998 “to determine if there is a need for LIHTC housing” in the City of Bedford. Petitioner’s Exhibit E, unnumbered page 1.
49. The Feasibility Study discussed the need for additional housing in the Bedford area:
“Using the capture rate in our market an obvious need for more housing is present. According to the numbers the units should lease with no problem.”²
Petitioner’s Exhibit E, page 13.
50. The Feasibility Study added:
“Basically, this means that any existing tenant would qualify for the subject rents. There are some properties with higher rents, but the majority are equal or below. This will limit the rent for the 60% limits by the maximum in the market. Information on 3 bedroom units were [sic] not available as none of the multi-family units surveyed had 3 bedroom units. This would indicate a need for additional hosing [sic, housing]. This is beneficial for the subject as it will provide a superior unit for a similar rent. It is even possible the rents of the subject could lead the market based on the condition and amenities to be provided in the units.” Petitioner’s Exhibit E, page 14.

² The Petitioner’s exhibit explains capture rate: “A capture rate technique and general rule of thumb tests the depth of a market and measure risk involved in the long term marketability.” Petitioner’s Exhibit E, page 13.

51. The Feasibility Study further determined:
 “In conclusion there is a total of 7,389 eligible households in Lawrence County and of that 2,825 come from the city of Bedford. The average occupancy rate is 99% with most apartment units at 100% occupancy, given this there is an obvious need for more multi-family housing. Also, according to Harris [Mr. Jamie Harris, the Executive Director of the Bedford Urban Enterprise Zone], the city is always looking for additional housing especially in the area of planned development. Taking all factors into consideration the demand for housing well exceeds the 56 units to be developed.” Petitioner’s Exhibit E, page 15.

52. Having concluded that a need for LIHTC existed in the Bedford area, the Feasibility Study next discussed rental rates that could be realized from the apartments:
 “According to the developers the current plan is to have 56 units. The proposed unit mix and rent is as follows:

Rents for proposed development				
	50%	50%	60%	
1 Bed	2 @ \$245	2 @ \$315	4 @ \$390	8 – 1 Bedrooms
2 Bed	4 @ \$320	8 @ \$375	12 @ \$470	24 – 2 Bedrooms
3 Bed	5 @ \$425	7 @ \$440	12 @ \$545	24 – 3-Bedrooms”

Petitioner’s Exhibit E, page 10.

53. A comparison of this Feasibility Study with data contained in the appraisal valuation dated March 1, 2001 (Petitioner’s Exhibit C)(Appraisal) indicates similar conclusions in both documents.

54. For example, the Appraisal asserted:
 “According to Mr. Jamie Harris, the Executive Director of the [Bedford Urban] Enterprise Zone, a development such as the subject is a good match with what the Enterprise Zone is trying to accomplish. Harris states the housing stock in Bedford and within the enterprise zone is much older and very uninhabitable.

One of the two primary goals of this zone is to improve the overall quality of life through activities such as **housing** and building renovations. The neighborhood of the subject is seeking housing such as the subject and would greatly benefit from it.” Petitioner’s Exhibit C, page 18 (Emphasis is that of the original) (This conclusion is also contained, substantially verbatim, in the Feasibility Study, Petitioner’s Exhibit E, page 8).

55. The Appraisal also concluded:
“The subject is well suited for its immediate neighborhood... There is nothing within the immediate neighborhood that would be detrimental to the subject.”
Petitioner’s Exhibit C, page 19.
56. Further, “The site is well positioned to take advantage of its residential location with close access to businesses and retail.” Petitioner’s Exhibit C, page 22.
57. Continuing, “The subject will take advantage of the subject site. The building layout is functional with appropriate space. Thus, the highest and best use as improved is the existing development.” Petitioner’s Exhibit C, page 36.
58. Also, “However, the market [for apartments] within Bedford was strong in 2001 with very few vacant units.” Petitioner’s Exhibit C, page 85.
59. Both the Feasibility Study and the Appraisal therefore concluded that a significant local demand existed for housing such as that provided by the Petitioner. This conclusion is further supported by data from eleven purported comparable properties presented by the Petitioner, indicating the occupancy rates for ten of these properties is at 95% or greater.³ (Petitioner’s Exhibit C, pages 60-79). The

³ The Board reaches no conclusions as to whether these eleven properties are comparable, either to each other or to the subject. Regardless, the high occupancy rates support the Petitioner’s contention of the local demand for apartment housing. The Board further observes that the one apartment complex that failed to achieve 95% occupancy has only six units; five units were apparently occupied, resulting in an occupancy rate of 83%. (Petitioner’s Exhibit C, page 76).

record also indicates the Petitioner's property "showed no vacancy in 2001." Petitioner's Exhibit C, page 85.

60. Therefore, neither the Feasibility Study nor the Appraisal found any "decreased market acceptability of the product for which the property was constructed or is currently used" or the "termination of the need of the property due to actual or probable changes in economic or social conditions," factors which may be indications of the presence of economic obsolescence. 50 IAC 2.2-10-7(e)(2).

61. The Appraisal further indicated the Petitioner's actual monthly rents are as follows:

One-bedroom units

2 @ \$255 2 @ \$275 1 @ \$415 3 @ 415

Two-bedroom units

4 @ \$310 8 @ \$430 12 @ \$435

Three-bedroom units

5 @ \$430 7 @ \$495 12 @ \$525

Petitioner's Exhibit C, pages 82-83.

62. Therefore, comparing projected rental income data in the Feasibility Study with actual rental income data contained in the Appraisal, the Petitioner expected to receive \$2,680 in monthly rents from the one-bedroom units.⁴ In fact, the Petitioner is receiving \$2,720 in monthly rents from the one-bedroom units. The Petitioner expected to receive \$9,920 monthly from two-bedroom units. The Petitioner is receiving \$9,900. The Petitioner expected to receive \$11,745 in monthly rents from three-bedroom units. The Petitioner is actually receiving \$11,915 in monthly rents.

⁴ For example, using data from Petitioner's Exhibit E, page 10, two one-bedroom units @ \$245 = \$490; two units @ \$315 = \$630; 8 units @ \$390 = \$1,560; the sub-totals (\$490 + \$630 + \$1,560) equal \$2,680.

63. Summarizing, the Petitioner therefore expected to receive \$24,345 in monthly rents from all units. Based on the actual rents identified in the Appraisal, the Petitioner would actually received \$24,535 monthly rental income from the fully occupied 56 units.
64. Stated differently, the apartments are actually performing better than the market originally anticipated.
65. The Petitioner's evidence demonstrates only that its apartment units are not the most expensive in the market; it does not establish the presence of obsolescence, the loss of market value of the property.
66. Finally, at the administrative hearing several of the Petitioner's witnesses asserted that the property taxes exceeded the projected estimate. For example, Mr. Miller testified that he would not have filed a tax appeal if the amount of the property's taxes had been the projected \$37,000.
67. These assertions do not serve as proof that the property has suffered a loss in market value as a result of rent restrictions, but instead simply support the concept that business expenses exceeded managerial estimates.
68. Summarizing, the Petitioner has failed to demonstrate that the property has experienced any loss of value. The rents charged by the Petitioner are well below the maximum amount allowed by the LIHTC program and are even characterized as "reasonable" by the Petitioner. Further, the Petitioner's evidence indicates a strong local market for apartment housing and, in fact, the Petitioner's property has achieved 100% occupancy. On the assessment date, the property had not been in operation for even a full year. Financial data provided by the Petitioner indicated that subsequent gross rents increased, rather than decreased.

69. The Petitioner's evidence fails to demonstrate that the property has experienced any loss of value. "Without a loss of value, there can be no economic obsolescence." *Pedcor*, 715 N.E. 2d at 438.
70. The Petitioner has therefore failed to satisfy the first prong of the two-prong test articulated in *Clark*.

The second prong of the two-prong *Clark* test: Whether the Petitioner has quantified economic obsolescence.

71. Because the Petitioner has failed to establish the presence of economic obsolescence, the Board will only briefly address the purported quantification.
72. "There are two methods of measuring external (economic) obsolescence: (1) capitalizing the income or rent loss attributable to the negative influence; and (2) comparing comparable sales of similar properties, some exposed to the negative influence and others not." IAAO Property Assessment Valuation, 173 (2nd ed. 1996).
73. Bedford Apartments attempted to use the comparable sales approach and the income approach to value to support its obsolescence claim.
74. The Appraisal (Petitioner's Exhibit C, pages 44-57) includes the purported comparable properties. While the appraisal report compares all of the features of the apartments, one prime factor is missing in this comparison of the properties. None of the purported comparable properties are Section 42 housing, like the subject property. None of the other housing units deal with tax credits.
75. Having initially argued that its property has experienced a significant disadvantage in the market as a result of rent restrictions, the Petitioner now asserts the contrary position in its proposed quantification calculation that its

property is, in fact, comparable to market rate properties.

76. Furthermore, in calculating the alleged value of the property, the appraiser made economic adjustments to all of the purported comparable properties, adjustments ranging from 62.9% to 88%. The Petitioner explained these adjustments as “the difference between the net income of the subject versus the comparables. The difference is multiplied by the NIM for each sale and adjusted as a percentage of the price per unit.” (Petitioner’s Exhibit C, page 57). The necessity for such significant adjustments indicates the purported comparable properties may not be comparable to the property under appeal.
77. The income approach (often times referred to as capitalization of income) is widely used in appraising income-producing properties. In this approach, the anticipated future income is discounted to a present worth figure through the capitalization process. IAAO Property Assessment Valuation, 203 (2nd ed. 1996).
78. The basic steps used in the income approach are:
- Estimate potential gross income. Potential gross income is annual economic rent for the property at 100% occupancy. Economic rent is the annual rent that is justified for the property on the basis of a careful study of comparable properties in the same area.
 - Deduct for vacancy and collection loss.
 - Add miscellaneous income to get the effective gross income.
 - Determine operating expenses.
 - Deduct operating expenses from the effective gross income to determine net operating income before discount, recapture, and taxes.
 - Select the proper capitalization rate.

- Determine the appropriate capitalization procedure to be used.
- Capitalize the net operating income into an estimated property value.

IAAO Property Assessment Valuation, 204 (2nd ed. 1996).

79. The Petitioner's income approach also contains readily apparent flaws.
80. The selection of the capitalization rate requires careful attention because a small change in the rate, e.g. from 8 to 9% can result in the estimates of value differing by thousands of dollars. The capitalization rate is that return which a prudent investor would expect to receive in the present market and consist of a return on capital as well as a recapture of the investment. IAAO Property Assessment Valuation, 233 (2nd ed. 1996).
81. Bedford Apartments used a capitalization rate of nine percent when calculating the obsolescence requested, but did not provide detailed information as to how it determined that the nine percent is appropriate in this case.
82. There are other inconsistencies in the appraisal report. The vacancy rate used to arrive at the effective gross income is 10%. However, the Appraisal indicated that there was no vacancy for the Petitioner's property in 2001 and asserted that comparable properties experienced an average of only 2% vacancy. Petitioner's Exhibit C, page 85.
83. Further, testimony and evidence submitted claim that the operating expenses of the Petitioner's property are high when compared to an average of fifty purportedly comparable properties. Petitioner's Exhibit C, page 87.
84. However, no evidence was submitted to show how these fifty apartments are similar to the subject.

85. Additionally, despite determining average expenses, the Petitioner then failed to use this data in its calculation: “However, when determining the retrospective value for the subject, the actual expenses from 2001 were applied.” Petitioner’s Exhibit C, page 84.
86. As discussed, the Petitioner’s expenses are higher than the average in several categories including decorating, ground expenses, advertising and the administrative expenses. As a result, the Petitioner’s income approach calculation fails to conform to generally recognized standards.
87. The Petitioner has therefore failed to satisfy the second prong of the two-prong test articulated in *Clark*.
88. For all the reasons above, the Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment as a result of this issue.

Summary of Final Determination

89. The Petitioner failed to meet its burden in this appeal. Accordingly, no change is made to the assessment.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.